

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 142

May 2, 1995, 12:34 p.m.  
Page S-5941 Temp. Record

## PRODUCT LIABILITY/Medical Malpractice Reform Opt-Out Options

**SUBJECT:** Product Liability Fairness Act . . . H.R. 956. Gorton motion to table the Simon/Wellstone amendment No. 614 to the McConnell amendment No. 603 to the Gorton substitute amendment No. 596.

### ACTION: MOTION TO TABLE AGREED TO, 51-49

**SYNOPSIS:** As passed by the House, H.R. 956, the Product Liability Fairness Act, will establish uniform Federal and State civil litigation standards for product liability cases and other civil cases, including medical malpractice actions.

The Gorton substitute amendment would apply only to Federal and State civil product liability cases. It would abolish the doctrine of joint liability for noneconomic damages, would create a consistent standard for the award of punitive damages, and would limit punitive damage awards.

The McConnell amendment, as amended, would reform Federal and State medical malpractice laws by eliminating joint liability for noneconomic and punitive damages, capping punitive damage awards at 2 times the sum of economic and noneconomic losses (see vote No. 139), creating a 2-year statute of limitations starting from the time of discovery of an injury, allowing for periodic payment of awards over \$100,000, requiring the reduction of awards by the amount of compensation received from collateral sources, limiting attorney contingency fees to of the first \$150,000 recovered and of any additional amount recovered, and encouraging States to adopt alternative dispute resolution mechanisms.

The Simon/Wellstone amendment would provide that a State could adopt a law to waive the application of the reforms in the McConnell amendment to legal actions taken by its residents against other of its residents. Also, two or more States could enter into agreements to waive the application of provisions of the McConnell amendment to legal actions between their citizens. For purposes of this amendment, a corporation would be deemed a citizen of its State of incorporation and of its principal place of business. (This proposal was originally advanced in the Labor Committee by Senator Abraham).

Debate was limited by unanimous consent. Following debate, Senator Gorton moved to table the Simon/Wellstone amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

(See other side)

YEAS (51)			NAYS (49)			NOT VOTING (0)	
Republicans (45 or 83%)		Democrats (6 or 13%)	Republicans (9 or 17%)		Democrats (40 or 87%)	Republicans (0)	Democrats (0)
Ashcroft	Helms	Dodd	Abraham	Akaka	Hollings		
Bennett	Hutchison	Exon	Cohen	Baucus	Inouye		
Bond	Inhofe	Lautenberg	D'Amato	Biden	Johnston		
Brown	Jeffords	Lieberman	DeWine	Bingaman	Kennedy		
Burns	Kassebaum	Robb	Packwood	Boxer	Kerrey		
Campbell	Kempthorne	Rockefeller	Shelby	Bradley	Kerry		
Chafee	Kyl		Simpson	Breaux	Kohl		
Coats	Lott		Specter	Bryan	Leahy		
Cochran	Lugar		Thompson	Bumpers	Levin		
Coverdell	Mack			Byrd	Mikulski		
Craig	McCain			Conrad	Moseley-Braun		
Dole	McConnell			Daschle	Moynihan		
Domenici	Murkowski			Dorgan	Murray		
Faircloth	Nickles			Feingold	Nunn		
Frist	Pressler			Feinstein	Pell		
Gorton	Roth			Ford	Pryor		
Gramm	Santorum			Glenn	Reid		
Grams	Smith			Graham	Sarbanes		
Grassley	Snowe			Harkin	Simon		
Gregg	Stevens			Heflin	Wellstone		
Hatch	Thomas						
Hatfield	Thurmond						
	Warner						

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

**No arguments were expressed in favor of the motion to table.**

**Those opposing** the motion to table contended:

This amendment, though proposed by Senator Simon, is word-for-word the amendment that was offered by Senator Abraham in the Labor Committee. That amendment was adopted on a bipartisan vote. We hope that it will have a similar fate before the full Senate. The premise of the amendment is very logical. If medical malpractice cases involve citizens of different States, it is reasonable to impose Federal tort standards. If a State, for intrastate disputes, wishes to deviate from those standards, it should have that option because those disputes do not involve citizens of other States. Similarly, if two States voluntarily agree to establish separate standards for medical malpractice cases involving their citizens, they should have that option. Tort laws of one State should not infringe on the sovereign rights of another. The Abraham amendment would not violate this principle. It would allow States to retain any tort laws they wished as long as they did not apply to the citizens of other States against the wishes of those other States. This amendment is meritorious, and we therefore urge our colleagues to vote against the motion to table it.